Nos. 15-233, 15-255

IN THE

Supreme Court of the United States

COMMONWEALTH OF PUERTO RICO, *et al.*,

Petitioners,

v.

FRANKLIN CALIFORNIA TAX-FREE TRUST, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Each of the *amici curiae*[2] are non-profit organizations that are dedicated to the advancement of the educational, economic, healthcare and civil rights interests of the people of Puerto Rico that reside in Puerto Rico or the United States. Each regards the question before the Court[3] as critical to the rights, interests and well-being of all Puerto Ricans.

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1. Letters of consent from parties in Case No. 15-233 are being submitted herewith. Pursuant to Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part, nor did any party to the action before the Court, or any person or entity other than the undersigned *amici*, make a monetary contribution to the preparation or submission of this brief.

2. The *amici* are LatinoJustice PRLDEF, who is joined in this brief by Alianza Americas, ASPIRA, Dominican Bar Association, Hispanic National Bar Association, Latino Commission on AIDS, League of United Latin American Citizens, Mexican American Legal Defense and Educational Fund, National Conference of Puerto Rican Women, Inc., National Council of La Raza, National Hispanic Foundation for the Arts, National Hispanic Media Coalition, National Institute for Latino Policy, National Latina Institute for Reproductive Health, National Puerto Rican Coalition, Inc., Presente.org, Puerto Rican Bar Association of New York, United States Hispanic Leadership Institute, and William C. Valasquez Institute.

3. The question presented before this Court is: whether Chapter 9 of the Bankruptcy Code, which does not apply to Puerto Rico, nonetheless preempts a Puerto Rico statute creating a mechanism for the Commonwealth's public utilities to restructure their debts.

The *amici* believe that the well-being and future of millions of Puerto Ricans are at risk as a result of the United States Court of Appeals for the First Circuit's decision that precluded Puerto Rico from restructuring its public debt under the Recovery Act of Puerto Rico.[4] That court's decision held that although Chapter 9[5] of title 11 of the United States Code (the "Bankruptcy Code")[6] does not apply to Puerto Rico, section 903(1) of the Bankruptcy Code[7] precludes Puerto Rico from enacting its own public debt restructuring regime. The decision below left Puerto Rico in a legal "no man's land" that is devastating to the island's current and future economy, healthcare and educational well-being, as well as to the Puerto Ricans living in the United States and the States to which they emigrate.

SUMMARY OF ARGUMENT

Amici respectfully submit that the Court should hold that Chapter 9 of the Bankruptcy Code is not preemptive and a bar to Puerto Rico's Recovery Act, and thereby enable Puerto Rico to utilize its Recovery Act to fairly and equitably restructure its public debt. Such a holding will provide Puerto Rico with the desperately needed "lifeline" that will prevent it from being left adrift in a sea of public debt that is crushing any prospects for economic recovery. Further, it will enable the island's economy to grow and

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4. *See* Puerto Rico Public Corporation Debt Enforcement and Recovery Act, 2014 P.R. Laws Act No. 71.

5. 11 U.S.C. § 901 *et seq.*

6. 11 U.S.C. § 101 *et seq.*

7. 11 U.S.C. § 903(1).

provide its residents with some of the most fundamental of rights: employment, educational opportunities, healthcare and the prospect of a promising future.

The ongoing fiscal emergency declared by Puerto Rico's Legislative Assembly in 2014, after multiple years of deep economic decline, is forcing an emigration crisis where hundreds of thousands of people are leaving Puerto Rico for employment in the United States, which has diminished the island's tax base and is depriving the island of its most promising younger and educated population. In addition, the emigration crisis is increasing financial burdens on the local, state and federal governments to which Puerto Ricans are emigrating.

Amici urge this Court to enable Puerto Rico to utilize its Recovery Act, and thereby initiate a decisive step toward a renewed and prosperous Puerto Rico for the benefit of all Puerto Ricans, both on the island and in the United States.

ARGUMENT

I. THE PRACTICAL IMPACT OF PUERTO RICO'S INABILITY TO RESPOND TO THE LARGEST ECONOMIC CRISIS IN ITS HISTORY BY UTILIZING ITS RECOVERY ACT IS AN IMPORTANT CONSIDERATION FOR THIS COURT'S REVIEW

Permitting Puerto Rico to utilize the debt restructuring regime enacted in the Recovery Act, rather than leaving the island without any available restructuring legislation, will have a dramatic impact upon the people of Puerto Rico that should be considered by the Court.

> "The constitution of our country, in its most interesting and vital parts, is to be considered; the conflicting power of the government of the Union and of its members, as marked in that constitution, are to be discussed; and an opinion given, which may essentially influence the great operations of the government. *No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision.*"[8]

As Justice Stone stated in his eulogy for Justice Brandeis during the Court's ceremony commemorating Brandeis's death:

> He [Brandeis] never lost sight of the fact that the Constitution is primarily a great charter of government, and often repeated Marshall's words: 'it is a constitution we are expounding' 'intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs.' Hence, its provisions were to be read not with the narrow literalism of a municipal code or a penal statute, but so that its high purposes should illumine every sentence and phrase of the document and be given effect as part of a harmonious framework of government. Notwithstanding the doctrine of stare decisis, judicial interpretations of the Constitution, since they were beyond legislative correction, could not be taken as the final word.

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8. *McCulloch v. Maryland*, 17 U.S. 316, 400 (1819) (emphasis added).

> They were open to reconsideration, in the light of new experience and greater knowledge and wisdom.[9]

In rendering its decisions, the Court has examined the impact of its decisions on the people affected and taken a comprehensive view of what needs to be considered in rendering such decisions.[10] The Court has also recognized health and welfare of individuals is often dependent on the ability of states to provide education and other vital public services.[11]

Therefore, in rendering its opinion on whether Chapter 9 of the Bankruptcy Code preempts Puerto Rico's Recovery Act, this Court should consider the practical consequences of preventing Puerto Rico from restructuring its public debts on the economy, as well as the people of Puerto Rico who live both on the island and in the United States.

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9. 317 U.S. XLII, XLVII (1942).

10. *See, e.g., Brown v. Bd. of Educ.*, 347 U.S. 483, 492-93 (1954) ("We must look instead to the effect of segregation itself on public education . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.")

11. *See, e.g., id.* at 493 ("Today, education is perhaps the most important function of state and local governments.").

II. PUERTO RICO'S FISCAL EMERGENCY AND LACK OF AN AVAILABLE RESTRUCTURING REGIME HAS CAUSED A CRITICAL POPULATION LOSS THAT IS DAMAGING ITS RECOVERY PROSPECTS

The ongoing financial crisis in Puerto Rico has forced its population into steep decline. This dramatic decline has resulted in a shrinking tax base. Unless Puerto Rico's fiscal emergency can be addressed through a fair and equitable debt restructuring regime,[12] the population will continue to suffer the destructive impact of a collapsed economy, forcing more emigration resulting in an even greater population decline. Further population decline will only decrease the tax revenue and deepen the crisis. However, if Puerto Rico is permitted to restructure its public debt, particularly that of The Puerto Rico Electric Power Authority ("PREPA"), its economy will be permitted to stabilize and its financial condition will improve. Such financial stability will stem the tide of population loss, increase Puerto Rico's tax base and permit Puerto Rico to grow its economy and repay its restructured obligations, including those of PREPA.

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12. *See, e.g.*, Ann-Marie Leroy, *Foreword* to JAY LAWRENCE WESTBROOK, ET AL., A GLOBAL VIEW OF BUSINESS INSOLVENCY SYSTEMS xv (Jay Lawrence Westbrook ed., Martinus Nijhoff Publishers 2010) ("Properly designed insolvency and creditor rights laws play an important role in economic development, by facilitating the provision of credit in the first place, by encouraging the preservation of distressed but viable enterprises, and by ensuring that the assets of irremediably failing businesses are redeployed to more promising uses.").

A. Puerto Rico's Population is in Severe Decline Due to Recent Emigration of Hundreds of Thousands of People

Puerto Rico's population peaked in 2004 at 3.8 million people.[13] Eleven years later, it has decreased by over five percent to fewer than 3.6 million.[14] By 2012, one-third of the Puerto Rican-born population lived in the United States.[15] Puerto Rico ranks seventh among countries around the world with the highest rate of population decline.[16]

This dramatic population decline is attributed to a number of factors. The largest factor is outmigration, also known as emigration.[17] On a net basis, Puerto Rico lost 144,000 residents between mid-2010 and 2013 – its largest loss in 30 years.[18] In 2014, there was a record-breaking

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13. Jaison R. Abel and Richard Deitz, *Population Lost: Puerto Rico's Troubling Out-Migration*, FED. RESERVE BANK OF N.Y.: LIBERTY ST. ECON. BLOG (Apr. 13, 2015), http://libertystreeteconomics.newyorkfed.org/2015/04/population-lost-puerto-ricos-troubling-out-migration.html#.VpfeAE1IhRA.

14. *Id.*

15. Jaison R. Abel and Richard Deitz, *The Causes and Consequences of Puerto Rico's Declining Population*, 20 CURRENT ISSUES IN ECON. AND FINANCE 4 (2014) https://www.newyorkfed.org/medialibrary/media/research/current_issues/ci20-4.pdf (hereinafter *Causes and Consequences*).

16. *Id.* at 1.

17. *Id.*

18. Jens Manuel Krogstad, Mark Lopez and Drew Desilver, *Puerto Rico's losses are not just economic, but in people, too,*

emigration of 84,000 residents.[19] Some projections indicate the island's population will continue to decline through at least 2020.[20] The United States Census Bureau projects that the population decline will continue through 2050 resulting in a reduction of total population to 3 million.[21]

Puerto Rico's population is decreasing at a rate of one percent per year[22] – ten times greater than that of West Virginia.[23] Such a substantial emigration severely impacts

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PEW RESEARCH CTR.: FACTTANK BLOG (July 1, 2015), http://www.pewresearch.org/fact-tank/2015/07/01/puerto-ricos-losses-are-not-just-economic-but-in-people-too/.

19. THE WHITE HOUSE, ADDRESSING PUERTO RICO'S ECONOMIC AND FISCAL CRISIS AND CREATING A PATH TO RECOVERY: ROADMAP FOR CONGRESSIONAL ACTION 1 (2015), https://www.whitehouse.gov/sites/default/files/roadmap_for_congressional_action___puerto_rico_final.pdf. The net outmigration in 2014 was 64,000 residents leaving Puerto Rico. By comparison, the net outmigration in 2013 was 49,000. *See* INSTITUTO DE ESTADÍSTICAS DE PUERTO RICO, LA EMIGRACIÓN NETA ALCANZA SU PUNTO MÁS ALTO EN LA ÚLTIMA DÉCADA [NET EMIGRATION REACHES ITS HIGHEST POINT IN THE LAST DECADE] (Sept. 17, 2015), http://www.estadisticas.gobierno.pr/iepr/LinkClick.aspx?fileticket=KmY2LP3VLPw%3d&tabid=105&mid=590 (P.R.).

20. Anne O. Krueger, Ranjit Teja and Andrew Wolfe, *Puerto Rico – A Way Forward*, GOV'T DEV. BANK FOR P.R. 1 (June 29, 2015), http://www.bgfpr.com/documents/puertoricoawayforward.pdf.

21. PEW RESEARCH CTR., PUERTO RICAN POPULATION DECLINES ON ISLAND, GROWS ON U.S. MAINLAND (Aug. 11, 2014), *available at* http://www.pewhispanic.org/files/2014/08/2014-08-11_Puerto-Rico-Final.pdf.

22. Krueger *et al.*, *supra* note 20.

23. *Id.* West Virginia is the only State with sub-zero population growth. *Id.*

the ability of the island to grow economically.[24] Moreover, Puerto Rico's declining birth rate, which also contributes to its declining population, can be attributed to the island's dire financial condition.[25] Not only are there fewer people in the work force, there is also a concomitant reduction in the tax revenue to support even basic infrastructure such as electricity, healthcare, education, transportation and industrial development.[26]

B. The Current Emigrants are Predominantly Puerto Rico's Younger Residents, Which Exacerbates the Erosion of the Tax Base and Frustrates the Ability to Improve Puerto Rico's Economy

Puerto Rico's emigration has resulted in a dramatic population loss. Emigrants are predominately younger people, which negatively affects Puerto Rico's tax base.[27] The uneven loss of the island's younger residents creates an increasingly disproportionately aging population, which further strains the island's health care and pension systems.[28] The numbers are striking: only 9.9 percent of the Puerto Ricans in the United States are 62 years old

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24. D. Andrew Austin, Cong. Research Serv. R44095, Puerto Rico's Current Fiscal Challenges 11 (Sept. 25, 2015), https://www.fas.org/sgp/crs/row/R44095.pdf.

25. Abel and Deitz, *Causes and Consequences*, *supra* note 15, at 2.

26. *Id.* at 1.

27. *Id.* at 7.

28. *Id.* at 1.

or older, while 21 percent of the population in Puerto Rico is 62 years old or older.[29]

The average age of emigrants from Puerto Rico in 2013 was 28.5 years old.[30] For the second consecutive year, the number of emigrants who are not married and have some post-secondary education increased.[31] The net loss of those with post-secondary education who left Puerto Rico in 2013 is 12,211, which represents a serious loss of the island's most promising human capital.[32] This increasing level of educated youth emigrating out of Puerto Rico further increases the negative impact on the island's present and future tax collections and financial prospects.

Such a significant erosion to Puerto Rico's most promising population segment exacerbates the problem of the island's declining tax base and casts a long term shadow on the island's future. Further, the remaining and disproportionately older population places an even greater strain on the island's already limited resources. Without a viable restructuring regime, like the Recovery Act, Puerto Rico will continue to decline, and the negative

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29. Ctr. for Puerto Rican Stud., Puerto Ricans in New York, the United States, and Puerto Rico, 2014 (Oct. 2015), *available at* http://centropr.hunter.cuny.edu/sites/default/files/Data_Sheets/DATASHEETPuertoRicans-NY-US-PR.pdf.

30. Instituto de Estadísticas de Puerto Rico, Perfil de Migrante 2013 [2013 Migrant Profile] 4 (Feb. 8, 2015), http://www.estadisticas.gobierno.pr/iepr/LinkClick.aspx?fileticket=u_goumCYemA%3D&tabid=165 (P.R.) (hereinafter *Migrant Profile*).

31. *Id.*

32. *Id.* at 20.

impact on the people of Puerto Rico will be severe. Such a situation will ensure additional waves of emigration out of Puerto Rico for the foreseeable future.

C. As a Result of the Economic Crisis, Emigrants Are Seeking Any Employment Opportunities in the United States

The recent emigration from Puerto Rico to the United States is the largest in recent history.[33] As a result of the economic crisis, hundreds of thousands of Puerto Ricans are leaving their homes, families and place of birth to seek out jobs, even when prospects seem bleak and unpromising. Many Puerto Ricans leave their homes with no confirmed employment, no housing options and little or no disposable income. The majority live with family members or extended family until they can secure employment and become financially independent. Given the already high number of Puerto Ricans who live at or near poverty in the United States, securing employment that provides a stable transition and promotes economic stability and mobility is far from secure for most who emigrate.[34] From 2012 to 2013, the number of Puerto Ricans who emigrated to the United States who remained

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33. Nick Timiraos, *How Not to Fix a Fiscal Crisis: Puerto Rico's Population Loss Accelerates*, WALL ST. J.: REAL TIME ECON. BLOG (Jan. 4, 2016, 7:34 am), http://blogs.wsj.com/economics/2016/01/04/how-not-to-fix-a-fiscal-crisis-puerto-ricos-population-loss-accelerates/.

34. Univ. of P.R., *Puertorriqueños viven la crisis en Estados Unidos [Puerto Ricans Live in Crisis in the United States]*, DIALOGO, DEC. 21, 2015, http://dialogoupr.com/puertorriquenos-viven-la-crisis-en-estados-unidos/ (P.R.).

unemployed or unable to find steady employment increased from 45 to 52 percent.[35] In 2013, the average income of Puerto Rican emigrants to the United States decreased by 14 percent from the prior year.[36]

In one recent survey, a plurality of Puerto Rican emigrants (42 percent) cite job-related reasons for leaving the island for the United States.[37] In another survey, based on 2013 United States Census Bureau data, more than 80 percent of male emigrants cited job-related reasons for leaving Puerto Rico for the United States.[38] Because emigrants of all backgrounds and educational levels cannot find secure employment in Puerto Rico, they are forced to search for it in the United States.[39] The past decade of economic recession in Puerto Rico has led to the elimination of at least 250,000 jobs in Puerto Rico and has shrunk Puerto Rico's economy by ten percent.[40] Currently, (a) the employment rate of Puerto Ricans in the United States is 48.5 percent, while in Puerto

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35. *Migrant Profile*, *supra* note 30, at 4.

36. *Id.*

37. PEW RESEARCH CTR., *supra* note 21.

38. *Migrant Profile*, *supra* note 30, at 22.

39. FED. RESERVE BANK OF N.Y., AN UPDATE ON THE COMPETITIVENESS OF PUERTO RICO'S ECONOMY 4 (July 31, 2014), *available at* https://www.newyorkfed.org/medialibrary/media/outreach-and-education/puerto-rico/2014/Puerto-Rico-Report-2014.pdf.

40. THE WHITE HOUSE, ADDRESSING PUERTO RICO'S ECONOMIC AND FISCAL CRISIS AND CREATING A PATH TO RECOVERY: ROADMAP FOR CONGRESSIONAL ACTION 1 (2015), https://www.whitehouse.gov/sites/default/files/roadmap_for_congressional_action___puerto_rico_final.pdf.

Rico the employment rate is only 35.4 percent;[41] (b) the unemployment rate (i.e., the rate of unemployed people in the active workforce) is 11.6 percent in the United States, but is 18.9 percent in Puerto Rico;[42] (c) the average annual income of Puerto Ricans in the professional workforce in the United States is $50,756 for men and $42,263 for women, whereas in Puerto Rico it is $32,512 for men and $29,166 for women;[43] and (d) per capita income among Puerto Ricans in the United States is $18,457 annually, compared to only $10,960 on the island.[44] These disparities lead to a sharp divergence in purchasing power that is twice as much for Puerto Ricans living in the United States than those living on the island.[45] Poverty rates for Puerto Ricans in Puerto Rico are also more than 20 percent higher than for Puerto Ricans in the United States (42.8 versus 22.7 percent).[46]

The dire economic prospects in Puerto Rico, compounded by its current inability to restructure public debt and the hope of improved financial security in the United States, are driving massive emigration. The influx of Puerto Ricans to certain geographic centers in the United States may mean that there is excessive competition in the workforce, leaving many yet again without viable employment prospects. However, if Puerto

41. CTR. FOR PUERTO RICAN STUD., *supra* note 29.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

Rico is permitted to restructure its debts in a fair and equitable manner, it can create economic stability that will reduce the need for emigration and hasten Puerto Rico's financial recovery.

D. Reduction in Emigration Will Improve Puerto Rico's Financial Condition

The notion that a legal restructuring regime like the Recovery Act will improve a struggling economy is not novel, and has proven to work time and time again. "The insolvency process is uniquely intertwined with many other aspects of a country's laws. It is also the ultimate scale in that the rights of entrepreneurs, workers, and creditors must be properly balanced if an economy is to reach its maximum potential."[47] For example, the Asian financial crisis during the late 1990s and early 2000s demonstrated the overwhelming need for governments to have a legal framework to restructure debts.[48] As the emerging Asian

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47. JAY LAWRENCE WESTBROOK, ET AL., A GLOBAL VIEW OF BUSINESS INSOLVENCY SYSTEMS 5 (Jay Lawrence Westbrook ed., Martinus Nijhoff Publishers 2010).

48. "As a result of the financial crisis currently afflicting many of the [Asian Development] Bank's developing member countries (DMCs), DMCs have recognized the need for systemic legal frameworks for the recovery and restructuring of corporate debt in the private sector. As a result, insolvency laws in many DMCs are currently being proposed or amended: In transition economies within the region, there is a similar recognition of the need for such legal frameworks, in the context of the restructuring of state-owned enterprises in addition to the context of the private sector." ASIAN DEV. BANK, *Technical Assistance for Insolvency Law Reform*, (July 1998), http://www.adb.org/sites/default/files/project-document/72177/32395-con-tar.pdf.

markets discovered, an orderly restructuring regime allows an economy to re-emerge as dynamic and capable of growing while repaying restructured obligations.[49]

The experience of New York City in the 1970s is instructive as to the direct positive effect that stopping population loss has on an economy. During the 1970s, New York City lost ten percent of its population due to its financial crisis.[50] The shrinking tax base in New York City nearly forced it to declare bankruptcy in the 1970s.[51] With the stabilization of its finances through restructuring its public debt, however, improved financial management and a sharp reduction in crime, New York City increased its population from 7.1 million in the late 1970s to more than 8 million by 2000. With that population growth came a dramatic increase in New York City's tax base, which resulted in improved public services, healthcare, education and infrastructure, all of which further stimulated economic growth.[52] If Puerto Rico is afforded the opportunity to utilize the Recovery Act, it also will be able to restructure some of its public debt, and

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49. "[It] is worth emphasizing that despite its dramatic impact, the long run effects of the [Asian financial] crisis may be good not bad. To the extent that the crisis gives Asian countries an incentive to reform their economic systems, and to initiate some much need [sic] restructuring, they may emerge from the experience not weaker, but stronger institutions and a greater ability to attain sustainable economic growth." Charles W.L. Hill, *The Asian Financial Crisis*, Univ. of Wash., http://www.wright.edu/~tdung/asiancrisis-hill.htm.

50. Abel and Deitz, *Causes and Consequences*, *supra* note 15, at 7.

51. *Id.*

52. *Id.*

its prospects for an economic recovery will undoubtedly improve.

III. THE RECENT VOLUME OF EMIGRATION TO THE UNITED STATES IS INCREASING FINANCIAL BURDENS ON LOCAL, STATE AND FEDERAL GOVERNMENTS

The sharp decline in the population of Puerto Rico is increasing costs to both the federal government and the states to which emigrants relocate. In particular, the increased influx of Puerto Ricans to the United States has dramatically increased federal spending on Medicaid and Medicare, as well as federal and state expenditures for public assistance.[53] If Puerto Rico is precluded from utilizing the Recovery Act to fairly and equitably restructure its public debt, emigration will continue and the costs of supporting Puerto Rican emigrants will need to be borne by the federal and state governments.[54]

Currently, Puerto Rico has the lowest Medicaid and Medicare annual spending in the greater United States.[55] However, residents of the island enroll in these programs at higher rates than those in the United States: as of December 2014, 46 percent of the island's

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53. Maria Levis, *The Price Of Inequality For Puerto Rico*, HEALTH AFFAIRS BLOG (Dec. 29, 2015), http://healthaffairs.org/blog/2015/12/29/the-price-of-inequality-for-puerto-rico/#three.

54. For example, New York, which has the largest population of Puerto Ricans in the 50 states, has the highest percentage of outstanding debt to its gross national product (29 percent) of any of the states. FED. RESERVE BANK OF N.Y., *supra* at note 39, at 16.

55. *Id.*

residents accessed health insurance via Medicaid[56] (versus 18 percent in the United States)[57] and 21 percent via Medicare[58] (versus 15 percent on the United States).[59]

With respect to Medicaid, annual spending for people in Puerto Rico is $1,571 per enrollee, while annual spending in the United States is $5,790 per enrollee.[60] Similarly, Medicare annual spending for people in Puerto Rico is estimated at $5,208 per enrollee, while annual spending in the United States is estimated at $8,700 per enrollee.[61] With so many Puerto Rico residents enrolled in Medicaid and Medicare, coupled with the dramatically

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56. Annie L. Mach, Cong. Research Serv. R44275, Puerto Rico and Health Care Finance: Frequently Asked Questions 22 (2015), https://www.fas.org/sgp/crs/row/R44275.pdf.

57. *Id.*

58. Levis, *supra* note 53.

59. AARP Pub. Pol'y Inst., The Medicare Beneficiary Population (2009), http://assets.aarp.org/rgcenter/health/fs149_medicare.pdf

60. Levis, *supra* note 53.

61. This estimate for annual Medicare spending per enrollee in Puerto Rico is based on a calculation of Medicare Advantage spending reported by every managed care company reporting Medicare Net Premium to the P.R. Office of the Insurance Commissioner in corporate reports submitted in 2014 and CMS Medicare FFS 2013 Data for Part A and Part B Total Reimbursement and Enrollment and Medicare Advantage/Part D Contract Enrollment Data Monthly Enrollment by CPSC for December 2014. In this analysis Medicare FFS 2013 data was used as a proxy for 2014 data since this data is not yet available and trends for Medicare FFS have shown little variation over the past two years. *Id.*

higher spending rates in the United States, the costs to both the federal government and the states for Puerto Ricans who have relocated to the United States will increase over 67 percent for publicly assisted healthcare.[62] Studies have shown that the emigration to date has added $802.5 million to Medicaid spending and will likely add $194 million per year in Medicaid spending unless the emigration can be reduced.[63]

It is important to note that any increases in federal and state expenditures for such health care costs will not be offset by concomitant reductions in spending in Puerto Rico. Under the Medicaid regime, the federal matching rate for each state is between 50 and 83 percent depending on the per capita income of the state.[64] However, Puerto Rico's federal matching rate is capped by statute at 55 percent, despite the fact that its per capita income is lower than any state.[65] Further, the federal matching rate of 55 percent to which Puerto Rico is entitled is actually underfunded.[66]

Therefore, Puerto Ricans arriving in the United States will likely need publicly funded health care, which will put a further strain on the states to which they relocate and the federal government. These increased costs can be avoided if Puerto Rico is entitled to restructure its

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62. *Id.*

63. *Id.*

64. Mach, *supra* note 56, at 20.

65. *Id.*

66. Levis, *supra* note 53.

publicly funded debt under the Recovery Act, which will significantly reduce further emigration and, in turn, decrease the demand for publically funded health care from the states and federal government.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge the Court to reverse the decision of the United States Court of Appeals for the First Circuit and allow Puerto Rico's Recovery Act to be utilized.

Dated: January 26, 2016

Respectfully submitted,

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